

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH M. GREGORY,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

No. C 09-1800 PJH

**ORDER GRANTING IN PART AND
DENYING IN PART RULE 56(f)
MOTION FOR CONTINUANCE**

Defendant's motion for summary judgment, and plaintiff's motion to continue the summary judgment motion pursuant to Federal Rule of Civil Procedure 56(f), came on for hearing on August 4, 2010 before this court. Plaintiff Kenneth M. Gregory ("plaintiff") appeared in pro per. Defendant City and County of San Francisco ("the City" or "defendant") appeared through its counsel, Margaret Baumgartner. Having read all the papers submitted and carefully considered the relevant legal authority, the court hereby GRANTS plaintiff's Rule 56(f) motion in part and DENIES it in part, as stated at the hearing, and summarized as follows:

Plaintiff's motion for a continuance pursuant to Rule 56(f) fails to set forth the specific facts that plaintiff hopes to elicit from further discovery, whether such facts exist, or establish that such facts would be "essential" to plaintiff's opposition to defendant's motion. State of Cal. ex rel California Dept. of Toxic Substances Control v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998); see also Brae Transp., Inc. v. Coopers & Lybrand, 790 F.2d 1439, 1443 (9th Cir.1986)("[r]eferences in memoranda and declarations to a need for discovery do not qualify as motions under Rule 56(f)."). Thus, the motion fails to meet the legal

1 standard for a continuance under Rule 56(f), and is DENIED on that basis. However, to the
2 extent that plaintiff has already filed a motion to compel further discovery that is pending
3 before the Magistrate Judge, which independently justifies the request for a continuance,
4 plaintiff's motion for a continuance is hereby GRANTED.

5 The court will withhold determination on defendant's motion for summary judgment,
6 until after the pending motion to compel is resolved. In the event the Magistrate Judge
7 denies plaintiff's motion to compel, plaintiff shall have until two weeks after the date of such
8 denial to file his opposition to defendant's motion for summary judgment. In the event the
9 Magistrate Judge grants plaintiff's motion to compel, whether in whole or in part, plaintiff
10 shall have until two weeks after the date the City produces any further discovery to file his
11 opposition to the summary judgment motion.

12 Plaintiff is furthermore instructed that no further continuances will be granted, and no
13 further requests for a continuance may be filed with the undersigned, or with the Magistrate
14 Judge. Additionally, to the extent San Francisco General Hospital continues to appear as a
15 named defendant in the caption and docket pertaining to this action, that defendant is
16 hereby DISMISSED, for the reasons discussed at the hearing.

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18 **IT IS SO ORDERED.**

19 Dated: August 6, 2010



20 PHYLLIS J. HAMILTON
21 United States District Judge
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